held that a shipment made from a foreign country to a place in the United States is subject to the terms of the act relating to the posting and publishing of schedules of rates as declared by the interstate commerce act. *Fisher* v. *Great Northern Ry. Co.*, 49 Wash. 205, 95 Pac. 77.

CONSTITUTIONAL LAW—POWER OF JUDICIAL DEPARTMENT—INFRINGEMENT ON EXECUTIVE.—Hurd's Rev. Stat. of Illinois 1909, c. 93, created examining boards in various counties for the examination of miners. The members of this board were to be appointed by the county judges. This was attacked as being an attempt to impose non-judicial duties on the judges. *Held,* it was not unconstitutional, because the legislature was authorized to require such appointments, in that the power of appointing in such cases was ministerial under the Illinois constitution. *People* v. *Evans* (Ill. 1911) 93 N. E. 388.

Most states agree that there cannot be conferred upon the judiciary, the duties of another department. *Houseman* v. *Kent Circuit Judge*, 58 Mich. 364; *Phelan* v. *County*, 6 Cal. 532. But the courts divide as to what constitutes the duty of each department. This is especially true with regard to the power of appointment. Indiana holds that "while the power (*i. e.* to appoint) is intrinsically executive, it may be exercised by a court or by a legislature, as an incidental power of an independent department of the government." *State ex rel. Yancey* v. *Hyde*, 121 Ind. 20. And in regard to the appointment of city commissions, the same court holds that "while the powers conferred by the foregoing acts of the legislature upon judges in this state are not strictly judicial, yet they are not such as belong to either the legislative or executive departments of the state governments, and are, therefore, not within the inhibitions of the constitution." *City of Terre Haute* v. *E. and T. H. Ry. Co.*, 149 Ind. 174; *Board of Commissioners* v. *Moore*, 161 Ind. 426. New Jersey and Alabama hold much the same, declaring that appointment is not exclusive with either branch, being dependent on the constitution in regard to the particular office. *Fox* v. *McDonald*, 101 Ala. 51, 46 Am. St. Rep. 98; *Ross* v. *Freeholders of Essex*, 69 N. J. L. 291, 55 Atl. 310. Under such decisions it becomes necessary in each individual case to determine whether the office or appointment to be exercised under the court's action is connected with any one department of government so as to make the appointment partake essentially of the nature of that department. If it is an office connected with the judiciary in nature, the court may appoint. If not such an office, the act giving the court power is unconstitutional. So in New Jersey, the power to appoint an excise officer was given. But this was clearly not connected with the judiciary in nature. The act was held unconstitutional. *Schwarz, Prosecutor* v. *Mayor et al*, 68 N. J. L. 576, 53 Atl. 214. Another class is represented by Kentucky which allows appointment on the ground that "it would embarrass our government not to allow a blending of powers." The other extreme is supported by a few states which maintain that the power to appoint is not a judicial function. Appointing the board having charge of a jail was held void in Maryland. *Beasley* v. *Rideout*, 94 Md. 641, 52 Atl. 61. And the same as to the appointment of a caretaker for the court house. *Prince George's County* v. *Mitchell*, 97 Md. 330. Massachusetts and Minnesota follow this

course also in the *"Case of Supervisors of Elections,"* 114 Mass. 247, and *Foreman* v. *Commrs.,* 64 Minn. 371. But while these cases approve the majority rule, they have in practically all instances been offices which were clearly not connected with the judiciary in nature. The principal case is seemingly with the majority holding, in so far as it is not dependent on its peculiar state constitution. It presents a rule hard of application, in that it must depend so largely on the individual case and is certainly open to weighty argument in opposition. See dissenting opinion of ELLIOTT, C. J., in *State ex rel. Yancey* v. *Hyde,* 121 Ind. 20.

CONVERSION—RETURN OF GOODS AS DEFENSE.—The appellant bank effected a seizure of cordwood under an attachment which was dissolved and dismissed without any order for the disposition of the property, and thereupon the attachment defendant and another brought trover against the bank, the sheriff, and his sureties. *Held,* that judgment for the plaintiff for the full value of all the wood was erroneous, because 1 SAYLES, TEXAS CIVIL STATUTES, Title 10, § 216, provide that upon dissolution of attachment for any reason, the court may at its own motion or upon request of either party direct a return of the goods to the debtor, and since in this case it seems that one of the plaintiffs had acquired possession of the goods there was no conversion. *First State Bank of Hamlin et al.* v. *Jones & Nixon* (Tex. Civ. App. 1911) 139 S. W. 671.

It is generally held that conversion is complete as soon as goods are unlawfully appropriated, and subsequent return or regaining of possession may be proved by the defendant in mitigation of damages but not as a bar to the action. 1 SUTHERLAND, DAMAGES, Ed. 3, § 156, and Vol. 4, §§ 1138 to 1141 et seq. There are similar statutes in several states concerning the dismissal of attachment proceedings, but we have been unable to find any decisions like this under these statutes. This court in a former case, *Terry* v. *Webb* (Tex. Civ. App.) (not officially reported), 96 S. W. 70, said: "The provisions of this statute operate as a release of damages for making the levy, which statute being in derogation of the common law, as announced in the cases (cited in opinion), by a familiar rule of construction will not be extended to claims otherwise made." Some other cases under statutes similar to the one in Texas are *Jackson* v. *Burnett,* 119 N. C. 195, 25 S. E. 868, holding that, under a statute providing for the redelivery of the attached property to the defendant upon the discharge of the attachment, the defendant is not entitled to the property where he has transferred his interest pending attachment; and *Morawitz* v. *Wolf,* 70 Wis. 515, a case under a statute requiring an order to be entered that the property attached be delivered to the defendant upon a dissolution of the attachment, holding that an order to the defendant's assignee is irregular, as the order must be given to the defendant even though such order would be inoperative.

CONVEYANCING—GRANTEE'S NAME LEFT BLANK.—Plaintiff engaged to give a contractor a deed to certain land in question upon his presenting receipts for the labor expended and material used in the construction of a building for